

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NOAH GREENBERG,
Plaintiff,

v.

GANNETT FLEMING, INC.,
Defendant/
Cross-Claim Plaintiff,

and

TOWN OF FALMOUTH
Defendant/
Cross-Claim Defendant.

C.A. NO. 04-11934GAO

**DEFENDANT TOWN OF FALMOUTH'S MOTION
FOR SUMMARY JUDGMENT ON PLAINTIFF'S CLAIMS**

Now comes Defendant Town of Falmouth ("Falmouth"), pursuant to Rule 56 of Rules of Federal Civil Procedure, to move this Court to grant it summary judgment on both of the Counts Plaintiff brought against it: Count I (copyright infringement) and Count II (request for injunctive relief). Falmouth is entitled to summary judgment because Plaintiff filed his action beyond the time allotted by the applicable statute of limitations.

Along with **Memorandum of Reasons Supporting Defendant Town of Falmouth's Motion for Summary Judgment on Plaintiff's Claims** filed herewith, Falmouth relies on **Affidavit of William B. Owen** (attached hereto) to support this Motion.

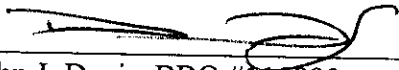
WHEREFORE, Falmouth requests that this Court allows this Motion and grants Falmouth summary judgement as to both of the Counts Plaintiff brought against Falmouth.

Request for Oral Argument

Falmouth requests an oral argument for its motion.

The Defendant,
TOWN OF FALMOUTH,
By its attorneys,

PIERCE, DAVIS & PERRITANO, LLP



John J. Davis, BBO #115890
Daniel G. Skip, BBO #629784
Ten Winthrop Square
Boston, MA 02110
(617) 350-0950

Dated: November 2, 2004

I hereby certify that a true copy of the above
document was served upon the attorney of
record for each party by mail
in compliance with M.R.C.P. on 11-4-04.



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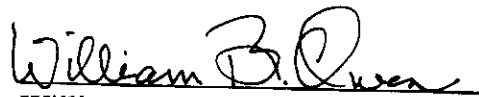
GANNETT FLEMING, INC.,
Defendant/
Cross-Claim Plaintiff,

and

TOWN OF FALMOUTH
Defendant/
Cross-Claim Defendant.AFFIDAVIT OF WILLIAM B. OWEN

I, William B. Owen, hereby depose and state:

1. I am employed by the Town of Falmouth as the Director of Public Works. I have been so employed for 21 years.
2. On May 30, 2001, Falmouth advertised in the Central Register a Request for Qualifications for Architectural Design Services regarding a municipal project for which Plaintiff had done design work previously.
3. Attached is a letter dated June 18, 2001, that I received regarding Plaintiff and the designs he created. I believe this letter is from Plaintiff.
4. I am over the age of 18 and I understand the obligation of an oath.
5. The statements in this affidavit are based on my personal knowledge.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 29th DAY OF
OCTOBER, 2004.
William B. Owen

NGA

NOAH GREENBERG ASSOCIATES

ARCHITECTS

22 Beebe Acres Road, Falmouth, Massachusetts 02540

(508) 457-0424

June 18, 2001

Mr. William B. Owen
Director of Public Works
59 Town Hall Square
Falmouth, Massachusetts 02540

Dear Mr. Owen,

On May 30, of this year, the Central Register posted an advertisement describing a Request for Qualifications to perform Architectural Design Services for an addition and renovation of the D.P.W. Facility on Gifford Street in Falmouth. This advertisement has caused us considerable consternation and confusion since it is our understanding that an agreement to perform these services has existed between us since 1998, and that we have performed satisfactorily and within the requirements of our agreement. It troubled me greatly that these actions were taken without notice, consultation or agreement on our part even after we have provided Preliminary Designs for the project. We have been very co-operative with your departments' needs and schedules, and it is our understanding that you were waiting final funding in order for us to proceed to the Design Development stage of the project.

The most troubling aspect of this situation is that the RFQ contained proprietary design drawings belonging to NGA Associates and were released without our permission and in direct conflict with AIA, and DSB rules.

Please be advised that we fully intend to pursue all of our rights and options regarding this unfortunate situation.

Sincerely ;


Noah Greenberg, RA
NGA Associates Architects

Date: June 18, 2001

Cc: Town Managers Office
Falmouth, MA.